Filed 11/21/19 P. v. Gezzer CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT STEVEN GEZZER,

Defendant and Appellant.

F076566

(Super. Ct. Nos. VCF340478, VCF294305)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Brett R. Alldredge, Judge.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Keith P. Sager, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

In March 2014, appellant Robert Steven Gezzer was sentenced to prison for an aggregate term of six years following a plea of no contest to possession for sale of a controlled substance (Health & Saf. Code, § 11378).[1] This sentence included a three-year enhancement for a prior narcotics conviction under section 11370.2, subdivision (c), and a one-year enhancement for a prior narcotics-related prison term under Penal Code section 667.5, subdivision (b). The court ordered appellant to serve two years in county jail, and it suspended the remaining four years, during which time appellant was to serve mandatory supervision.[2] Appellant began to serve his sentence. He did not appeal.

In 2016, appellant violated the terms of his mandatory supervision. In September 2017, he entered a plea of no contest to buying or receiving stolen vehicle equipment (Pen. Code, § 496d, subd. (a)). He admitted that he was in violation of the terms and conditions of his mandatory supervision from his 2014 conviction.[3]

In November 2017, appellant was again sentenced. The court revoked appellant's mandatory supervision from his 2014 conviction. Appellant was ordered to serve the remainder of his 2014 six-year term in county jail, which was deemed the base term. For the 2017 conviction, the court imposed a one-third consecutive term of eight months.

In November 2017, appellant filed the present appeal. While this appeal was pending, the Legislature enacted Senate Bill No. 180 (2017-2018 Reg. Sess.) (Senate Bill 180). Senate Bill 180 became effective on January 1, 2018. (*People v. Barton* (2019) 32 Cal.App.5th 1088, 1091.) Senate Bill 180 reduced the number of sentencing

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[1] All future statutory references are to the Health and Safety Code unless otherwise noted.

[2] The 2014 conviction occurred in Tulare County Superior Court case number VCF294305.

[3] The 2017 conviction occurred in Tulare County Superior Court case number VCF340478.

enhancements under section 11370.2, subdivision (c).[4] Under Senate Bill 180, a three-year enhancement may now be imposed only for a prior conviction for sales of narcotics involving a minor in violation of section 11380.[5] It is undisputed that, following Senate Bill 180, appellant would not qualify for the three-year enhancement he received in 2014 under section 11370.2, subdivision (c).

The parties agree, as do we, that Senate Bill 180 applies retroactively to all judgments which are not yet final. (*People v. Grzymski* (2018) 28 Cal.App.5th 799, 805, review granted Feb. 13, 2019, S232911 (*Grzymski*).) The parties, however, disagree on whether appellant may benefit from Senate Bill 180.

In addition to Senate Bill 180, the Governor signed Senate Bill No. 136 into law on October 8, 2019. This amends Penal Code section 667.5, subdivision (b) regarding prior prison term enhancements.[6] (Senate Bill No. 136 (2019-2020 Reg. Sess.) (Senate Bill 136).) Under Senate Bill 136, a one-year prior prison term enhancement only applies if a defendant has a prior conviction for a sexually violent offense as defined in Welfare and Institutions Code section 6600, subdivision (b). Appellant filed a supplemental brief contending he benefits from this change in law. It is undisputed that, under Senate Bill 136, appellant would not qualify for the one-year enhancement he received in 2014 under

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4 Section 11370.2, subdivision (c) now provides: "Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and *consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11380,* whether or not the prior conviction resulted in a term of imprisonment." (Italics added.)

5 Section 11380, subdivision (a), generally makes it a crime for a person 18 years of age or over to solicit, induce, encourage or intimidate a minor to violate certain drug-related statutes.

6 Because it was enacted at a regular session, Senate Bill No. 136 goes into effect on January 1, 2020. (Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600, subd. (a).)

Penal Code section 667.5, subdivision (b). The parties, however, disagree on whether appellant may benefit from Senate Bill 136.

We conclude that, before Senate Bill 180 went into effect and before the Governor signed Senate Bill 136, appellant's 2014 judgment became final. As such, and regardless of his 2017 sentencing, he does not benefit from these changes in law. We affirm.

DISCUSSION

We review de novo the retroactive application of a statute. (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 183; see also *Grzymski*, *supra*, 28 Cal.App.5th at p. 805 [analyzing when a sentence becomes a final judgment].) To resolve appellant's arguments, we summarize several legal concepts.

I. The Retroactive Application Of A New Law Impacting Criminal Punishment.

Absent some indication to the contrary, courts presume the Legislature intended amendments to apply retroactively when they reduce the punishment for a crime, at least in cases that are not yet final. (See *People v. Brown* (2012) 54 Cal.4th 314, 323–324; see *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).) Generally, when the amendment mitigates punishment and there is no saving clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed. (*Estrada*, *supra*, 63 Cal.2d at p. 748.) However, the amended statute must take effect before the judgment of conviction becomes final. (*Id.* at p. 744.) This rule rests on an inference that, when the Legislature reduces the punishment for an offense, it has determined the former penalty was too severe. (*Estrada*, at p. 745.) It is presumed that the Legislature must have intended for the new lighter penalty to apply to every case to which it constitutionally could apply. (*People v. DeHoyos* (2018) 4 Cal.5th 594, 600.) For purposes of the *Estrada* rule, a judgment is not final if appellate courts may provide a remedy on direct review. (*People v. Barboza* (2018) 21 Cal.App.5th 1315, 1319.)

II. A Criminal Sentence Becomes Final If The Sentence Is Imposed And The Defendant Does Not Appeal Within 60 Days.

In a criminal case, a judgment is rendered when a trial court orally pronounces the sentence. (*People v. Karaman* (1992) 4 Cal.4th 335, 344, fn. 9; *Grzymski*, *supra*, 28 Cal.App.5th at p. 805.) The sentence represents the judgment in a criminal case, and it is a declaration of punishment once a defendant's guilt has been determined. (*People v. Wilcox* (2013) 217 Cal.App.4th 618, 625.)

The timing of a criminal judgment, however, can vary depending on when probation is granted. A trial court may either grant probation by suspending *imposition* of the sentence, or by imposing the sentence and suspending its *execution*. (*People v. Segura* (2008) 44 Cal.4th 921, 932.) "When the trial court suspends imposition of sentence, no judgment is then pending against the probationer, who is subject only to the terms and conditions of the probation. [Citations.] The probation order is considered to be a final judgment only for the 'limited purpose of taking an appeal therefrom.' [Citation.] On the defendant's rearrest and revocation of her probation, '. . . the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced.' " (*People v. Howard* (1997) 16 Cal.4th 1081, 1087 (*Howard*).) If a defendant violates probation, the trial court may revoke and terminate probation, and then impose sentence in its discretion, thereby rendering judgment. (Pen. Code, § 1203.2, subd. (c); *Howard*, *supra*, at p. 1087.) "That judgment will become final if the defendant does not appeal within 60 days." (*People v. McKenzie* (2018) 25 Cal.App.5th 1207, 1214, review granted Nov. 20, 2018, S251333 (*McKenzie*); see also California Rules of Court, rule 8.308(a).)[7]

In contrast, when a trial court initially imposes sentence, but suspends execution of that sentence and grants probation, a judgment has been rendered. (*People v. Mora*

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[7] All future references to rules are to the California Rules of Court unless otherwise noted.

(2013) 214 Cal.App.4th 1477, 1482 [imposition of a sentence is the entry of a final judgment, even if execution is suspended and the defendant is placed on probation].) That judgment will become final if the defendant does not appeal within 60 days. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1420–1421; see Rule 8.308(a).) If the defendant violates probation, the trial court may revoke and terminate probation, but it must then order execution of the originally imposed sentence. (*McKenzie*, *supra*, 25 Cal.App.5th at p. 1214; Pen. Code, § 1203.2, subd. (c); *Howard*, *supra*, 16 Cal.4th at pp. 1087–1088; *People v. Martinez* (2015) 240 Cal.App.4th 1006, 1017.)

III. The Imposition Of A Split Sentence.

Under Penal Code section 1170, subdivision (h)(5)(A) and (B), a trial court is permitted to impose a "split sentence" in certain circumstances. A split sentence involves imposing the sentence and then "suspending execution of the concluding portion of [it]." (*People v. Borynack* (2015) 238 Cal.App.4th 958, 963; see Pen. Code, § 1170, subd. (h)(5)(A) & (B).) The suspended portion of the term is known as "mandatory supervision[.]" (Pen. Code, § 1170, subd. (h)(5)(B).) Appellant received such a sentence in 2014.

This sentencing option is available for certain low-level felony offenders. Under the split sentencing scheme, qualifying offenders will not serve their sentences in state prison but instead will "serve their sentences either entirely in county jail or partly in county jail and partly under the mandatory supervision of the county probation officer." (*People v. Scott* (2014) 58 Cal.4th 1415, 1418–1419.) When a split sentence is imposed, it becomes a final judgment if the defendant does not file a timely appeal. (*Grzymski*, *supra*, 28 Cal.App.5th at pp. 805–806.)

IV. Appellant Does Not Benefit From Either Senate Bill 180 Or Senate Bill 136 Because His 2014 Conviction Became A Final Judgment 60 Days Later.

We agree with respondent that appellant's 2014 judgment was already final when Senate Bill 180 went into effect and before the Governor signed Senate Bill 136. We reject appellant's argument that his 2017 sentencing should be deemed the final judgment of conviction, permitting retroactive application of these bills. Two cases are instructive.

In *McKenzie*, the defendant pleaded guilty in 2014 to drug-related charges in three cases. In two of those cases, he admitted having suffered four prior felony drug convictions under section 11370.2, subdivision (c). The trial court suspended imposition of sentence, granted the defendant five years' probation in all three cases, and ordered him to attend drug court. (*McKenzie, supra*, 25 Cal.App.5th at pp. 1210-1211.) In 2016, the defendant admitted violating the terms of his probation. The trial court revoked probation and sentenced the defendant to a split term of 22 years (10 years to be served in county jail and 12 years on mandatory supervision). This sentence included four three-year terms for the prior felony drug conviction enhancements under section 11370.2, subdivision (c). (*McKenzie*, *supra*, at p. 1211.) The defendant's case was not yet final on appeal when Senate Bill 180 became effective. (*McKenzie*, at p. 1211.)

On appeal, this court determined that Senate Bill 180 provided the defendant with retroactive relief because the trial court had *suspended imposition of sentence* in 2014. (*McKenzie*, *supra*, 25 Cal.App.5th at pp. 1214–1215.) Indeed, *McKenzie* stated that, if the trial court had initially imposed sentence in 2014 and suspended its execution, then the defendant's judgment would have been final 60 days later and he could not obtain the retroactive benefit of a change in law under *Estrada*. (*McKenzie*, *supra*, at pp. 1217–1218.)[8] The trial court was ordered to strike the prior felony drug conviction enhancements under section 11370.2, subdivision (c). (*McKenzie*, *supra*, at p. 1219.)

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[8] *McKenzie* is currently pending review before our Supreme Court. This issue is as follows: "When is the judgment in a criminal case final for purposes of applying a later

In *Grzymski*, the defendant received a sentence enhancement from section 11370.2. Similar to the situation here, the defendant received a split sentence of 10 years. Part of that term would be served in county jail and the remainder on mandatory supervision. (*Grzymski, supra*, 28 Cal.App.5th at p. 802.) Over the next four years, the defendant repeatedly violated the terms of his mandatory supervision. (*Ibid.*) In 2015, he admitted to transportation of methamphetamine and two additional section 11370.2 sentencing enhancements. (*Grzymski*, *supra*, at p. 802.) The trial court imposed a split sentence of 10 years to run concurrent to the sentence in the first case. In 2017, the defendant was prosecuted a third time for weapons-related offenses. The court sentenced him to 16 months in prison, terminated mandatory supervision in the first two cases, and ordered that he serve the balance of the 10-year split sentences in prison. (*Ibid.*) The *Grzymski* court determined that Senate Bill 180 did not provide the defendant with retroactive relief because his split sentences from 2013 and 2015 had "been final for years." (*Grzymski*, *supra*, at p. 802.) Those split sentences had become final judgments 60 days after they were imposed. (*Ibid.*) *Grzymski* found persuasive the analysis from *McKenzie* regarding when an order granting probation is final for purposes of determining whether a defendant is entitled to relief under Senate Bill 180. (*Grzymski, supra*, at p. 806.)[9]

In his supplemental letter brief regarding Senate Bill 136, appellant argues that *McKenzie* controls in this situation regarding both Senate Bill 180 and Senate Bill 136. According to appellant, the trial court suspended execution of his sentence in 2014. As a result, appellant contends his judgment was not final 60 days later. In his supplemental reply letter brief, he notes that Penal Code section 1170, subdivision (h)(5)(A), directs a

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change in the law if the defendant was granted probation and imposition of sentence was suspended?"

9 *Grzymski* is currently pending review before our Supreme Court. The high court ordered briefing deferred pending disposition of *McKenzie*.

court to "suspend" the period of mandatory supervision. He further notes that Penal Code section 1170, subdivision (h)(5)(B), provides a trial court with authority to terminate early a period of mandatory supervision. He asserts that a split sentence "more closely resembles" a defendant being placed on probation with imposition of sentence suspended. Appellant's contentions are without merit.

Penal Code section 1170, subdivision (h)(5), provides in relevant part that, unless a sentencing court finds it inappropriate, the court "shall suspend execution of a *concluding portion* of the term for a period selected at the court's discretion." (*Id.* at subd. (h)(5)(A), italics added.) The suspended portion of a defendant's term "shall be known as mandatory supervision, and, unless otherwise ordered by the court, *shall commence upon release from physical custody or an alternative custody program*, whichever is later." (*Id.* at subd. (h)(5)(B), italics added.) The statute states that "[t]he period of supervision shall be mandatory, and may not be earlier terminated except by court order." (*Ibid.*)

Appellant is mistaken that a split sentence is analogous to placing a defendant on probation with imposition of sentence suspended. To the contrary, a split sentence first requires a defendant to be *released from physical custody*. Although a trial court may suspend a "concluding portion" of a defendant's split sentence, this is in no way similar to suspending imposition of sentence.

Appellant was committed to state prison but ordered to serve his time in the county jail. The trial court imposed an aggregate prison term of six years, which included a three-year sentence enhancement under section 11370.2, subdivision (c), and a one-year enhancement under Penal Code section 667.5, subdivision (b). The court suspended four years of this sentence, during which time appellant was to serve a term of mandatory supervision by probation subject to certain terms and conditions.

The imposition of appellant's 2014 sentence represented a judgment. (*People v. Mora*, *supra*, 214 Cal.App.4th at p. 1482.) Appellant began to serve his 2014 sentence. Nothing in the record indicates that he filed a notice of appeal within the required 60 days following the 2014 sentence. (See Pen. Code, § 1237; Rule 8.308(a).) Thus, the 2014 judgment became final long before Senate Bill 180 went into effect, and long before the Governor signed Senate Bill 136.

We reject appellant's suggestion that his 2014 judgment was revived in 2017 when the aggregate sentence was imposed following his new conviction. He cites *People v. Phoenix* (2014) 231 Cal.App.4th 1119 (*Phoenix*) and *People v. Saibu* (2011) 191 Cal.App.4th 1005 (*Saibu*). These opinions do not establish that appellant should receive retroactive benefit from Senate Bill 180 or Senate Bill 136.

In *Phoenix*, the defendant was convicted of crimes in two counties. (*Phoenix*, *supra*, 231 Cal.App.4th at p. 1121.) A trial court in the second county refused to calculate custody credits from the other county's case. (*Id.* at p. 1122.) On appeal, the *Phoenix* court concluded that the second trial court became the "sentencing court" for both cases. (*Id.* at p. 1126.) The sentence from the other county was "replaced by the consecutive sentence imposed" by the second trial court. (*Ibid.*) Thus, it was the second court's duty to calculate and award the defendant with all of his custody credits, including those pertaining to the case in the other county. (*Ibid.*)

In *Saibu*, a defendant's abstract of judgment had to be corrected because he had served a portion of his sentence in one case before the trial court sentenced him to a single aggregate term in two other cases. The defendant should have been credited for all of his custody time. (*Saibu*, *supra*, 191 Cal.App.4th at pp. 1012–1013.) *Saibu* held that, when a trial court resentences a defendant to a single aggregate term pursuant to rule 4.452, the court has "modified" the original sentence so that custody credits must be

credited pursuant to Penal Code section 2900.1.[10] (*Saibu, supra,* 191 Cal.App.4th at p. 1012.)

Neither *Phoenix* nor *Saibu* assist appellant. When a defendant violates probation, a trial court may revoke and terminate probation, but it must order execution of the *originally imposed sentence*. (*Howard, supra,* 16 Cal.4th at pp. 1087–1088; *McKenzie, supra,* 25 Cal.App.5th at p. 1214; *People v. Martinez, supra,* 240 Cal.App.4th at p. 1017; Pen. Code, § 1203.2, subd. (c).) When appellant violated his probation, the 2017 sentencing court simply consolidated the 2014 sentence with his new additional sentence. The 2017 court revoked and terminated mandatory supervision, and it ordered execution of the originally imposed 2014 sentence. Although the 2017 court may have become the "sentencing court" for both cases, it merely followed the required procedure under Penal Code sections 669[11] and 1170.1,[12] and rule 4.452. Nothing reasonably suggests that this procedure was intended to impact the retroactive application of new criminal laws. Indeed, under rule 4.452, a sentencing court must impose "a single aggregate term" as defined in Penal Code section 1170.1, subdivision (a), when a determinate sentence is imposed consecutive to one or more determinate sentences previously imposed in the

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10 Penal Code section 2900.1 states: "Where a defendant has served any portion of his sentence under a commitment based upon a judgment which judgment is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts."

11 Penal Code section 669, subdivision (a), directs a sentencing court to declare whether a second judgment shall run concurrently or consecutively when a person is convicted of multiple crimes, whether in the same proceeding or in different proceedings or courts.

12 Under Penal Code section 1170.1, subdivision (a), when a defendant is convicted of two or more felonies (whether in the same proceeding or from a different proceeding or court) and a consecutive term of imprisonment is imposed, the aggregate term of imprisonment is the sum of the principal term, the subordinate term, and any additional terms imposed for applicable enhancements.

same court or in other courts. The sentences on all such counts are combined "as though they were all counts in the current case." (Rule 4.452(a)(1).) In the combined case, the judge must make a new determination regarding which count represents the principal term. (Rule 4.452(a)(2).) The current sentencing court, however, may *not* change any discretionary decisions imposed by the previous judge. (Rule 4.452(a)(3).)

Neither *Phoenix* nor *Saibu* analyzed whether resentencing a defendant and imposing an aggregate sentence pursuant to rule 4.452 impacts a prior final judgment. Neither of these opinions stands for the proposition that retroactive application should be extended when a defendant is resentenced to an aggregate prison term involving convictions from more than one matter. Cases are not authority for propositions not considered or decided. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1134.) These opinions do not establish that appellant should receive benefit of Senate Bill 180 or Senate Bill 136.

Finally, we reject appellant's assertion that we should strike these enhancements even if his 2014 judgment became final. Appellant quotes the following statement from *In re Chavez* (2004) 114 Cal.App.4th 989 (*Chavez*): "There is nothing in *Estrada* that prohibits the application of revised sentencing provisions to persons whose sentences have become final if that is what the Legislature intended or what the Constitution requires." (*Id.* at p. 1000.) *Chavez* does not assist appellant.

In *Chavez,* the Legislature amended the sentencing scheme for tax fraud. These legislative amendments were described as a "cleanup bill" needed " 'to correct technical and grammatical errors in penal provisions in various codes.' " (*Chavez, supra,* 114 Cal.App.4th at p. 995.) The Legislature intended these amendments to correct statutory language to ensure conformity to the determinate sentencing scheme. (*Id.* at p. 998.) The *Chavez* court determined that, under these circumstances, the Legislature's amendments should apply retroactively even to final judgments. (*Id.* at pp. 999–1000.) According to

the appellate court, the Legislature had the power to adjust prison sentences, and even a final judgment could be adjusted "for a legitimate public purpose." (*Id.* at p. 1000.)

The unique circumstances found in *Chavez* are not present in this matter. Nothing reasonably suggests that the Legislature intended for Senate Bill 180 or Senate Bill 136 to have the far changing ramifications that appellant now advances.[13] Nothing suggests that these bills were intended to fix numerous prior technical and grammatical mistakes. Nothing suggests these bills were intended to impact final judgments. To the contrary, if the Legislature had held such an intent, it would have either made such a pronouncement or provided a mechanism for qualified convicts to seek relief. *Chavez* is distinguishable and does not establish retroactive application of Senate Bill 180 or Senate Bill 136 to appellant's final judgment from 2014.

Based on this record, appellant's 2014 sentence became a final judgment 60 days after that sentence was pronounced. As a result, neither Senate Bill 180 nor Senate Bill 136 provides him with retroactive relief. Accordingly, these amendments do not apply to appellant. (See *Grzymski*, *supra*, 28 Cal.App.5th at p. 806 [rejecting claim that Senate Bill 180 applied to an earlier split sentence].)

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13 The June 28, 2017, Assembly Floor Analysis for Senate Bill 180 made the following comments. It noted that sentencing enhancements do not prevent or reduce drug sales, but they do destabilize families and communities. " 'The current policy of sentencing people with nonviolent convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities." (Assem. Com. On Public Safety, Off. Of Assem. Floor Analyses, 3d reading analysis of Sen. Bill No. 180 (2017–2018) as introduced Jan. 24, 2017, p. 2.)

The September 13, 2019, Senate Floor Analysis for Senate Bill 136 noted that the one-year enhancement under Penal Code section 667.5, subdivision (b), "re-punishes people for previous jail or prison time served instead of the actual crime when convicted of a non-violent felony." This enhancement "exacerbates existing racial and socio-economic disparities in our criminal justice system." It is projected that repealing this enhancement "will save California tax payers tens of millions [of] dollars each year." (Sen. Com. On Public Safety, Off. Of Sen. Floor Analyses, Sen. Bill No. 136 (2019-2020), pp. 2–3.)

V. Appellant's Equal Protection Challenge Is Without Merit.

Appellant raises an equal protection challenge. We disagree that a constitutional violation occurred.

A criminal defendant has no vested interest in a specific term of imprisonment. (*People v. Turnage* (2012) 55 Cal.4th 62, 74.) "It is both the prerogative and the duty of the Legislature to define degrees of culpability and punishment, and to distinguish between crimes in this regard. [Citation.] Courts routinely decline to intrude upon the 'broad discretion' such policy judgments entail. [Citation.] Equal protection analysis does not entitle the judiciary to second-guess the wisdom, fairness, or logic of the law. [Citation.]" (*Id*. at p. 74.)

Equal protection of the law is denied only if no rational relationship exists between the disparity of treatment and some legitimate governmental purpose. (*People v. Turnage*, *supra*, 55 Cal.4th at p. 74.) The legislation in question will survive scrutiny if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. (*Ibid*.) To make a successful rational basis challenge, a party must negate every conceivable basis that might support the disputed statutory disparity. If a plausible basis exists for the disparity, appellate courts may not second-guess its wisdom, fairness, or logic. (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.)

Our Supreme Court has recognized that the Legislature has a rational reason for refusing to make new laws that reduce criminal sentences fully retroactive—namely, "to assure that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written." (*In re Kapperman* (1974) 11 Cal.3d 542, 546.) Consequently, " '[a] reduction of sentences only prospectively from the date a new sentencing statute takes effect is not a denial of equal protection.' " (*People v. Floyd* (2003) 31 Cal.4th 179, 189.)

Under the Supreme Court authorities above, appellant's equal protection challenge is without merit. He has failed to negate every conceivable basis that might support the

disputed statutory disparity. (See *Johnson v. Department of Justice*, *supra*, 60 Cal.4th at p. 881.) Accordingly, he does not establish a constitutional violation and this claim fails.

DISPOSITION

The judgment is affirmed.

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LEVY, J.

WE CONCUR:

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HILL, P.J.

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DETJEN, J.